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Report of the International Criminal Court

Report of the International Criminal Court**

Note by the Secretary-General

The annual report of the International Criminal Court is submitted herewith to the General Assembly, in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court (see A/58/874, annex, and A/58/874/Add.1) and paragraph 17 of Assembly resolution 63/21.

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Report of the International Criminal Court to the United Nations for 2008/09

Summary

The present report, covering the period from 1 August 2008 to 31 July 2009, is the fifth annual report of the International Criminal Court submitted to the United Nations. It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations.

The Court continued to be seized of four situations during the reporting period. The situations in the Democratic Republic of the Congo, Uganda and the Central African Republic were each previously referred to the Court by those States parties to the Rome Statute themselves. The situation in Darfur, the Sudan, had been referred by the Security Council. Six other situations on four continents were under preliminary analysis by the Office of the Prosecutor, namely, those in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Kenya and Palestine. No decision on whether to open an investigation in those situations was taken.

On 26 January 2009, the Court, following substantial pre-trial proceedings, began its first trial, that of *The Prosecutor v. Thomas Lubanga Dyilo*. Mr. Lubanga is charged, in relation to the situation in the Democratic Republic of the Congo, with the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities. The prosecution concluded the presentation of its case on 14 July, and the defence is scheduled to begin the presentation of its evidence in October.

On 26 September 2008, Pre-Trial Chamber I, in relation to the situation in the Democratic Republic of the Congo, confirmed seven charges of war crimes and three charges of crimes against humanity against Germain Katanga and Mathieu Ngudjolo Chui. Their joint trial is scheduled to begin on 24 September 2009.

On 15 June 2009, Pre-Trial Chamber II, in relation to the situation in the Central African Republic, confirmed three charges of war crimes and two charges of crimes against humanity against Jean-Pierre Bemba Gombo. On 22 June, the Prosecutor sought leave to appeal the decision of the Chamber that declined to confirm charges of torture or the war crime of outrages upon personal dignity.

On 4 March 2009, Pre-Trial Chamber I, in relation to the situation in Darfur, issued a warrant of arrest against Omar Hassan Ahmad Al-Bashir, President of the Sudan. The Chamber determined that there were reasonable grounds to believe he had committed crimes within the jurisdiction of the Court, namely five counts of crimes against humanity and two counts of war crimes. The Chamber declined to confirm charges of genocide, a decision which has since been appealed by the Prosecutor on the issue of the correct standard of proof at the arrest warrant stage. The Court issued requests to a number of States for the arrest and surrender of Mr. Al-Bashir.

On 20 November 2008, the Prosecutor brought an application for arrest warrants or, in the alternative, summons to appear for three individuals for crimes allegedly committed against African Union peacekeepers in Darfur on 29 September 2007, at the African Union Haskanita base. On 7 May 2009, Pre-Trial Chamber I issued a summons to appear for Bahr Idriss Abu Garda, finding that there were reasonable grounds to believe he had committed crimes within the jurisdiction of the Court, specifically three counts of war crimes, and that a summons to appear would be sufficient to ensure his appearance before the Court. Mr. Abu Garda made his initial appearance before the Court on 18 May 2009. He is scheduled to appear again on 12 October 2009 for a hearing on the confirmation of the charges. No decision was taken on the requests of the Prosecutor related to the two other individuals.

Eight warrants of arrest are outstanding: four in the situation in Uganda, three in the situation in Darfur and one in the situation in the Democratic Republic of the Congo. The Court relies on States to arrest and surrender suspects to the Court. The Court has issued requests for cooperation in the arrest and surrender of those individuals, which are legally binding on States parties to the Rome Statute. In the meantime, the Court continued to monitor the status of cooperation with its requests and to strengthen its cooperation with States, the United Nations and other actors, with a view to ensuring necessary support in all areas.

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I. Introduction

1. The present report, covering the period from 1 August 2008 to 31 July 2009, is the fifth annual report of the International Criminal Court submitted to the United Nations in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court (see A/58/874, annex, and A/58/874/Add.1). It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations since the fourth report of the Court to the United Nations (A/63/323).

2. The Court was created by an international treaty, the Rome Statute, which was adopted on 17 July 1998 and entered into force on 1 July 2002. During the reporting period, Chile and the Czech Republic deposited their instruments of ratification, becoming the 109th and 110th States, respectively, to ratify or accede to the Rome Statute. States that have ratified or acceded to the Statute include 30 African States, 14 Asian States, 17 Eastern European States, 24 Latin American and the Caribbean States and 25 Western European and other States.

3. The Court is an independent judicial institution, charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The Rome Statute requires that proceedings before the Court be carried out fairly and impartially, with full respect for the rights of the accused. An innovative aspect of the Rome Statute in comparison with previously established international criminal courts or tribunals is that victims may participate in proceedings, even if not called as witnesses.

4. In carrying out its functions, the Court relies on the cooperation of States, international organizations and civil society, in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation from States include analysis, investigation, the arrest and surrender of persons, witness protection and the enforcement of sentences.

5. The Court is independent from but has close historical, legal and operational ties to the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute and by the Relationship Agreement between the United Nations and the International Criminal Court. During the reporting period, the Court continued to develop its cooperation with the United Nations.

II. Judicial proceedings

6. During the reporting period, the Court continued to be seized of four situations, each referred to the Court by a State party to the Rome Statute concerning its own nationals or territory or by the Security Council. The situation in the Democratic Republic of the Congo was referred to the Court by that State party on 19 April 2004. The situation in Uganda was referred to the Court by that State party on 29 January 2004. The situation in the Central African Republic was referred to the Court by that State party on 22 December 2004. The situation in Darfur, the Sudan, was referred to the Court by the Security Council in its resolution 1593 (2005).

7. Following each referral, the Prosecutor evaluated the available information and determined that there was a reasonable basis to begin an investigation into each situation. Judicial proceedings have taken place in relation to each investigation, resulting in 8 cases involving 14 individuals alleged to have committed crimes within the jurisdiction of the Court.

A. *The Prosecutor v. Thomas Lubanga Dyilo* (situation in the Democratic Republic of the Congo)

8. On 26 January 2009, Trial Chamber I, comprising Judges Sir Adrian Fulford, Elisabeth Odio Benito and René Blattmann, commenced the trial of *The Prosecutor v. Thomas Lubanga Dyilo*. Mr. Lubanga is alleged to be the leader of the Union des patriotes congolais and Commander-in-Chief of its military wing, the Forces patriotiques pour la libération du Congo. He is charged with having committed war crimes in the Democratic Republic of the Congo, specifically enlisting, conscripting and using children under the age of 15 to participate actively in hostilities. There are 102 victims participating, through their legal representatives, in the *Lubanga* case.

9. Proceedings had been stayed following the finding of the Trial Chamber that a fair trial was not then possible because the prosecution had neither disclosed a significant body of confidentially obtained, potentially exculpatory evidence to the defence nor made the relevant materials available to the judges for their review. On 21 October 2008, the Appeals Chamber confirmed the stay of proceedings, finding at the same time that the Court could not order disclosure of information obtained by the Prosecutor under conditions of confidentiality without the consent of the information providers. Over a period of five months, the prosecution, having obtained the consent of the relevant information providers, disclosed those materials or made them available to the judges who could determine the appropriate method of disclosure for each document. On 18 November 2008, the Chamber found that the prosecution had met its obligations and that the trial could proceed.

10. The prosecution presented its evidence from 26 January until 14 July 2009, tendering 119 items of evidence. Thirty witnesses gave testimony before the Court, 28 of whom were called by the prosecution and 2 by the Chamber itself. Protection of witnesses was a major issue before and during the trial. Among the witnesses, 19 were included in the International Criminal Court Protection Programme, including 8 vulnerable witnesses who testified with in-court protective measures (e.g., the use of pseudonyms, voice and face distortion and partially closed sessions) and other special measures (e.g., screened from viewing the accused, allowed to testify in free narrative, psychosocial support in court and frequent breaks). Other less vulnerable witnesses testified with in-court protective measures only. Four witnesses gave full testimony publicly. While some witnesses were shielded from the public as a protection measure, the accused and his defence counsel were able to see all witnesses in Court during their testimony and to know their identities. The defence cross-examined all witnesses called by the prosecution. The defence is scheduled to begin the presentation of its evidence in October 2009.

B. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (situation in the Democratic Republic of the Congo)

11. On 26 September 2008, Pre-Trial Chamber I, comprising Judges Akua Kuenyehia, Anita Ušacka and Sylvia Steiner, confirmed charges brought by the Prosecutor against Germain Katanga and Mathieu Ngudjolo Chui. The Chamber confirmed seven counts of war crimes (wilful killing, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging and destroying the enemy's property) and three charges of crimes against humanity (murder, sexual slavery and rape). The Chamber declined to confirm two counts of war crimes (cruel or inhuman treatment and outrages upon personal dignity) and one count of crimes against humanity (inhumane acts) charged by the Prosecutor.

12. Following the confirmation of charges, the Presidency constituted Trial Chamber II, comprising Judges Fatoumata Dembele Diarra, Fumiko Saiga (replaced on her passing by Judge Hans-Peter Kaul) and Bruno Cotte, and assigned the case of Mr. Katanga and Mr. Ngudjolo Chui to it for trial. The Trial Chamber and the parties began preparations for the trial, dealing in particular with procedural matters related to the disclosure of evidence and the protection of witnesses and information. The trial is scheduled to start on 24 September 2009.

13. Mr. Katanga challenged the admissibility of the case against him, arguing that he had previously been subject to legal proceedings for the same crimes in the Democratic Republic of the Congo. Trial Chamber II held a public hearing on the issue, during which representatives of the Democratic Republic of the Congo, including the Minister of Justice, participated, along with the parties and participants in the case. On 12 June 2009, the Chamber dismissed Mr. Katanga's challenge, finding that the national authorities had not opened any investigation into the attack for which Mr. Katanga was being prosecuted before the Court. Mr. Katanga subsequently appealed this decision. The appeal was pending at the time of submission of the present report.

C. *The Prosecutor v. Jean-Pierre Bemba Gombo* (situation in the Central African Republic)

14. A hearing to confirm eight charges brought by the Prosecutor against Jean-Pierre Bemba Gombo began on 12 January 2009 before Pre-Trial Chamber III, comprising Judges Ekaterina Trendafilova, Hans-Peter Kaul and Fumiko Saiga (the latter being replaced on her passing by Judge Cuno Tarfusser). On 3 March 2009, the Chamber adjourned the hearing, requesting the Prosecutor to consider amending the charges, given that the facts might establish a different form of criminal responsibility (command responsibility) than that charged. The Prosecutor subsequently added this additional form of criminal responsibility. On 15 June 2009, Pre-Trial Chamber II confirmed three charges of war crimes (murder, rape and pillage) and two charges of crimes against humanity (murder and rape) against Mr. Bemba in his capacity as a military commander but not, as originally charged, as a co-perpetrator. The Chamber declined to confirm the charge of torture as a war crime, owing to the lack of precision of the document containing the charges. The Chamber declined also to confirm the charges of torture as a crime against humanity and the war crime of outrages upon personal dignity, as it considered that those

charges were fully subsumed in the count of rape and that to include them would amount to cumulative charging. On 22 June 2009, the prosecution applied for leave to appeal the Chamber's decision to decline to confirm the charges.

D. *The Prosecutor v. Omar Hassan Ahmad Al-Bashir* (situation in Darfur, the Sudan)

15. On 4 March 2009, Pre-Trial Chamber I, comprising Judges Akua Kuenyehia, Sylvia Steiner and Anita Ušacka, issued a warrant of arrest against Mr. Omar Hassan Ahmad Al-Bashir, President of the Sudan, in relation to the situation in Darfur. The Chamber determined that there were reasonable grounds to believe he had committed crimes within the jurisdiction of the Court, namely five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (attacking civilians and pillaging). The Chamber found that there was not sufficient evidence to sustain charges of genocide. For those charges that were confirmed, the Chamber determined that Mr. Al-Bashir's status as Head of a State not party to the Rome Statute had no effect on the Court's exercise of jurisdiction.

16. On 10 March 2009, the prosecution applied for leave to appeal in relation to the genocide charges. On 24 June, Pre-Trial Chamber I granted leave to appeal on the issue of whether the Chamber had applied the wrong legal test in relation to the correct standard of proof required for issuing a warrant of arrest. On 6 July, the prosecution submitted its appeal. That appeal was pending at the time of submission of the present report.

17. On the instruction of the Chamber, the Registrar transmitted requests for cooperation for the arrest and surrender of Mr. Al-Bashir to the Sudan, to all States parties to the Rome Statute and to all Security Council members not party to the Rome Statute. In issuing the decision, the Chamber concluded that, according to Security Council resolution 1593 (2005), taken together with Article 25 of the Charter of the United Nations, the Sudan was obligated to cooperate with the Court, including by arresting and surrendering Mr. Al-Bashir. The Chamber also directed the Registrar to prepare and transmit requests for cooperation to any other State as might be necessary to ensure the arrest of Mr. Al-Bashir.

E. *The Prosecutor v. Bahr Idriss Abu Garda* (situation in Darfur, the Sudan)

18. On 20 November 2008, the Prosecutor brought an application for arrest warrants or, in the alternative, should the suspects express willingness to cooperate, summons to appear in a third case in relation to the situation in Darfur. The Prosecutor alleged that three rebel commanders were responsible for crimes committed against African Union peacekeepers in Haskanita, Darfur, on 29 September 2007. On 7 May 2009, Pre-Trial Chamber I issued a summons to appear for Bahr Idriss Abu Garda for crimes allegedly committed in the attack. The Chamber found that there were reasonable grounds to believe he had committed crimes within the jurisdiction of the Court, specifically three counts of war crimes (murder, attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission and pillaging). The Chamber concluded that a summons to

appear would be sufficient to ensure the appearance of Mr. Abu Garda before the Court. Mr. Abu Garda made his initial appearance on 18 May 2009. He is scheduled to appear again on 12 October 2009 for a hearing on confirmation of the charges.

F. *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (situation in Uganda)

19. Warrants of arrest have been outstanding for four alleged members of the Lord's Resistance Army in the situation in Uganda since July 2005.

20. The prosecution submitted information to Pre-Trial Chamber II on the reported death of Vincent Otti, allegedly executed upon the instructions of Joseph Kony. No decision was taken, and the warrant remained in effect.

21. In October 2008, Pre-Trial Chamber II, comprising (until 10 March 2009) Judges Mauro Politi, Fatoumata Dembele Diarra and Ekaterina Trendafilova, initiated proceedings on the admissibility of the case. In accordance with the principle of complementarity underlying the Rome Statute, a case is inadmissible before the Court if it is being investigated or prosecuted by a State, unless the State is unwilling or genuinely unable to carry out the investigation or prosecution. The Chamber noted that Uganda and the Lord's Resistance Army had concluded an agreement (not yet signed), the annexure to which provided for the establishment of a special division of the High Court to "try individuals who are alleged to have committed serious crimes during the conflict" in Uganda.[1] As none of the suspects were represented by counsel, the Chamber appointed counsel for the defence and invited observations from Uganda, the Prosecutor, counsel for defence and victims on the admissibility of the case. The Chamber subsequently granted leave to two non-governmental organizations to submit observations as amici curiae.

22. On 10 March 2009, the Chamber, having considered the various submissions made, issued its decision on admissibility, reaffirming that it was the Court that had the responsibility for determining whether a case was inadmissible. The Chamber concluded that the scenario against which the admissibility of the case had to be determined remained the same as at the time of the issuance of the warrants, that is, one of total inaction on the part of the relevant national authorities. The Chamber therefore found the case to be admissible at that stage. Counsel for the defence subsequently appealed the decision. At the time of the present report, the appeal was pending.

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[1] Decision initiating proceedings under article 19, requesting observations and appointing counsel for the defences, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, ICC-02/04-01/05-320 (quoting the "Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement" on 19 February 2008).

G. Outstanding warrants of arrest

23. At the time of submission of the present report, eight warrants of arrest were outstanding, namely, for:

(a) In the situation in Uganda: Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen;

(b) In the situation in the Democratic Republic of the Congo: Bosco Ntaganda;

(c) In the situation in Darfur: Omar Hassan Ahmad Al-Bashir, Ahmad Harun and Ali Kushayb.

24. The warrants of arrest have been outstanding since 2005 in the situation in Uganda, since 2006 in the case of Mr. Ntaganda, since 2007 in the cases of Mr. Harun and Mr. Kushayb and since March 2009 in the case of Mr. Al-Bashir. The Court has issued requests for cooperation in the arrest and surrender of each of those individuals to relevant States. States parties and other States that have legal obligations to cooperate with the Court are required to comply with those requests.

III. Investigations and analysis

A. Investigations

1. Situation in the Democratic Republic of the Congo

25. During the reporting period, the prosecution conducted a total of 34 missions to eight countries for trial preparations and investigations related to the ongoing cases in the situation in the Democratic Republic of the Congo: *The Prosecutor v. Thomas Lubanga Dyilo*, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, and the investigation of a third case focusing on alleged crimes committed in the North and South Kivu provinces.

26. From 8 to 11 July 2009, the Prosecutor visited Bunia and the Ituri district in the Democratic Republic of the Congo. He met with leaders and representatives from all communities. Through a series of town hall meetings, he also met with victims, representatives of civil society and the local population.

(a) *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*

27. The Office of the Prosecutor conducted 23 missions to the Democratic Republic of the Congo and to five other countries in the context of the case against Germain Katanga and Mathieu Ngudjolo Chui. They included one forensic mission to the village of Bogoro, Ituri district, conducted with the assistance of the United Nations and States parties. The mission included the examination of a crime scene, the collection of imagery evidence and the exhumation and examination of human remains.

(b) The case of the Kivu provinces

28. In September 2008, the Prosecutor announced the opening of a third case in the Democratic Republic of the Congo, focusing on alleged crimes committed in the

Kivu provinces by a multiplicity of perpetrators and groups (including the Forces démocratiques de libération du Rwanda, the Congrès national pour la défense du peuple, the regular forces and the Mai-Mai), including numerous reports of sexual crimes. Eight missions were conducted inside or outside the Democratic Republic of the Congo to collect information in the context of this new case.

29. Preliminary consultations and meetings with external actors and observers were organized before and after the opening of this third investigation, including two missions to the Democratic Republic of the Congo to contribute to the case selection. Investigators travelled to and worked in the Kivus to undertake an assessment on issues relating to security, protection and logistics.

30. Other missions, including a mission to Rwanda, were conducted in order to discuss access to information and complementarity matters in relation to this third investigation.

31. The Office of the Prosecutor continued to work in close collaboration with State and non-State partners in and outside of the region. Given the particular characteristics of the alleged attacks, the Office considered ways to facilitate investigations by the Democratic Republic of the Congo judiciary and contributions to *dossiers d'instruction* against perpetrators. In the opinion of the Office, that will require enhanced protection for witnesses and the judiciary. On 11 and 12 June 2009, in Goma, the Office, along with other actors in the region working on sexual and gender-based violence, discussed in a conference organized by the European Union programme REJUSCO (Restauration de la justice à l'est de la République démocratique du Congo), with the University of Goma and the Université Libre des Pays des Grand Lacs, how to effectively assist sexual violence victims and to prevent and prosecute sexual violence crimes in the Democratic Republic of the Congo.

2. Situation in Uganda

32. The Office of the Prosecutor conducted investigative activities, including eight missions to six countries, in relation to the situation in Uganda. The Office collected a range of information on crimes allegedly being committed by the Lord's Resistance Army in the Democratic Republic of the Congo, the Sudan and the Central African Republic. According to information received by the Office, the incidence of alleged crimes rose sharply from September 2008, as the Lord's Resistance Army, operating increasingly freely across a wide area between Garamba National Park in the Democratic Republic of the Congo and border areas of southern Sudan close to the Central African Republic, put into operation plans to expand their numbers by several hundred through the abduction of civilians, primarily children. The Office received reports of particularly savage attacks taking place in December 2008 and January 2009, with the killing and abduction of several hundred people in a series of raids on towns and villages across a broad area of the Democratic Republic of the Congo and southern Sudan. The reports indicated that there may have been more than 1,000 deaths, more than 1,500 abductions and more than 200,000 persons internally displaced as a result of Lord's Resistance Army activity in the period covered by the present report.

33. The Office continued its efforts to galvanize support for the arrest of suspects sought by the Court. With a view to cutting off the supply and support network of the suspects, the Office followed up on its requests to a number of States for

information on those providing the Lord's Resistance Army with supplies and encouraged States to take action to deter such support.

34. On 13 July 2009, the Prosecutor travelled to Kampala and met with Yoweri Museveni, President of Uganda; Amama Mbabazi, Minister for Security; Crispus Kiyonga, Minister of Defence; Oryem Okello, Minister of State for International Affairs; and Kiddu Makubuya, Attorney-General. He shared with them the need for enhanced international support for arrest efforts, emphasizing the Security Council presidential statement of 22 December 2008 (S/PRST/2008/48).

35. The Office also analysed information in relation to alleged crimes committed by the Uganda People's Defence Forces and related national proceedings.

3. Situation in the Central African Republic

36. From 1 August 2008 to 14 July 2009, the Office of the Prosecutor carried out 49 missions to six countries in relation to the situation in the Central African Republic. The Office gathered evidence with a view to establishing responsibility for the crimes committed in 2002 and 2003. The Office performed forensic activities in Bangui (exhumation and autopsy), with cooperation extended by the Central African authorities and a number of partners. The Office continued to closely monitor allegations of crimes committed since the end of 2005 and whether any investigation and prosecution has been, or is being, conducted with respect to crimes potentially falling under the Court's jurisdiction.

4. Situation in Darfur, the Sudan

37. During the reporting period, the Office of the Prosecutor conducted 30 missions to 13 countries. In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his eighth and ninth reports to the Council on 3 December 2008 and 5 June 2009, respectively, on the status of the investigation into the situation in Darfur.

38. In his briefing to the Security Council on 3 December 2008, the Prosecutor reported that the Government of the Sudan continued not to comply with its legal obligations under Council resolution 1593 (2005) to enforce the judicial decisions of the Court.

39. The Prosecutor emphasized that execution of arrest warrants required concrete decision-making. He stated that, in accordance with Security Council resolution 1593 (2005), the Government of the Sudan, as the territorial State, had the legal duty and the capacity to execute the warrants but that the Council, other States, the United Nations and regional organizations must act to ensure such arrests by severing all non-essential contact with individuals subject to warrants of arrest and refraining from providing any support to the suspects.

40. In his briefing on 5 June 2009, the Prosecutor updated the Security Council on the issuance of the arrest warrant against Mr. Al-Bashir and the summons to appear for Mr. Abu Garda. He added that he would inform the Council of further investigations, if any, in December 2009. The Prosecutor stated that, should the crimes stop, there would be no need for further investigations.

41. Following its application in the Haskanita case, the Office of the Prosecutor's tracking cell worked for six months with a variety of actors to locate and facilitate

the voluntary surrender of the alleged perpetrators. Following the initial appearance of Abu Garda on 18 May 2009, the Office highlighted the assistance of a number of African and European States that had worked together with the Office of the Prosecutor during the previous six months, including the Netherlands, Chad, Senegal, Nigeria, Mali, the Gambia and others.

42. On 7 July 2009, the Prosecutor travelled to Addis Ababa, where he met with the members of African Union High-Level Panel on Darfur, following an invitation by the Chair of the Panel, Thabo Mbeki, former President of South Africa. In order to secure the cooperation of all actors, the Prosecutor also travelled to Doha on 30 May 2009, where he met with the Prime Minister and Minister for Foreign Affairs of Qatar, Sheikh Hamad bin Jassim bin Jabr Al-Thani.

43. Owing to the security conditions in the Sudan, activities continued to be conducted in African and European countries in closed meetings with representatives of the relevant social groups in Darfur and Khartoum and with members of the diaspora. The content of warrants of arrest, the reports by the Office of the Prosecutor to the Security Council and the rights of victims to participate in the proceedings were among the subjects discussed during these interactive sessions.

B. Analysis activities

44. The Office of the Prosecutor monitored proactively all information on crimes potentially falling within the jurisdiction of the Court. The Office analysed communications by individuals and groups. As at 30 June 2009, the Office had received a total of 8,242 communications relating to article 15 of the Rome Statute, 4,870 of which were received between 1 August 2008 and 30 June 2009. Of these new communications, 3,823 related to the situation in South Ossetia, Georgia. Of the remaining 1,047, 58 per cent (608) were considered as not providing any basis for the Office of the Prosecutor to take further action.

45. Six situations under analysis by the Office of the Prosecutor have been made public: Afghanistan, Colombia, Côte d'Ivoire, Georgia, Kenya and Palestine. Afghanistan, Colombia, Georgia and Kenya are all States parties to the Rome Statute. The Office of the Prosecutor continued its policy of making its monitoring activities public, subject to confidentiality requirements, when it believes it can contribute to preventing crimes.

46. In relation to Afghanistan, the Office analysed alleged conduct by all actors involved. The Office met, outside of Afghanistan, with Afghan officials and representatives of both organizations and individuals. The Office sent requests for information to the Government of Afghanistan and the Afghan Independent Human Rights Commission on 9 June 2008. The Prosecutor has not received an answer to those requests.

47. The Office continued the ongoing examination of alleged crimes falling within the jurisdiction of the Court in Colombia. The Office analysed information on investigations and proceedings being conducted in Colombia against paramilitary leaders, politicians, guerrilla leaders and military personnel allegedly responsible for crimes that may fall under the jurisdiction of the Court. The Office also analysed allegations of the existence of international support networks assisting armed groups

committing crimes within Colombia. The Prosecutor paid a visit to Colombia from 25 to 27 August 2008, at the invitation of the Government of Colombia and the country's Public Prosecutor's Office. The Prosecutor met with senior officials from the Government, the Prosecutor's Office and the Supreme Court of Justice, as well as representatives of Colombian civil society. During his stay in the country, the Prosecutor accompanied the Public Prosecutor's Office on an exhumation in Urabá.

48. The situation in Georgia came under preliminary examination on 14 August 2008. The Prosecutor General of Moscow, whose State is not a party to the Statute, has sent 3,817 communications to the Court. The Minister of Justice of Georgia visited the Office in August 2008. The Prosecutor requested information from the Governments of the Russian Federation and Georgia on 27 August 2008. The Russian authorities replied to the request on 24 October 2008, and the Georgian authorities responded on 14 November 2008. The Office of the Prosecutor conducted a visit to Georgia in November 2008.

49. The situation in Kenya has been under preliminary examination by the Office since February 2008. The Prosecutor has received numerous article 15 communications on the post-election violence. On 3 July 2009, an agreement was reached in The Hague, the Netherlands, between a high-level delegation from the Government of Kenya, led by Justice Minister Kilonzo, and the Office of the Prosecutor. Both parties agreed that, in order to prevent new violence during the next election period, those most responsible for the post-election violence must be held accountable. The Kenyan authorities agreed that, should efforts to conduct national proceedings fail, they would refer the situation to the International Criminal Court in accordance with article 14 of the Rome Statute within one year. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, submitted to the Office of the Prosecutor material of the Commission of Inquiry into the Post-Election Violence headed by Kenyan judge Philip Waki. The Prosecutor subsequently received two reports from the Attorney-General of Kenya, on witness protection measures and on police investigations.

50. The Court has jurisdiction over the situation in Côte d'Ivoire by virtue of a declaration submitted under article 12, paragraph 3, by the Ivorian Government on 1 October 2003. The declaration accepts the jurisdiction of the Court as at 19 September 2002. The most serious alleged crimes, including alleged widespread sexual violence, were committed between 2002 and 2005. The Office conducted a visit to Côte d'Ivoire in July 2009.

51. On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar relating to article 12, paragraph 3, of the Rome Statute, which allows States not parties to the Statute to accept the Court's jurisdiction. Owing to the uncertainties of the international community with respect to the existence or non-existence of a State of Palestine, the Registrar accepted the declaration without prejudice to a judicial determination on the applicability of article 12, paragraph 3. Between 28 December 2008 and 30 June 2009, the Office of the Prosecutor received 358 article 15 communications related to the situation of Israel and the Palestinian territories. The Office began to examine all issues related to its jurisdiction, including whether the declaration by the Palestinian Authority accepting the exercise of jurisdiction by the Court meets statutory requirements, whether crimes within the Court's jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes. The Office received a number of

communications, including the *Report of the Independent Fact-Finding Committee on Gaza: No Safe Place*, which was presented to the League of Arab States on 30 April 2009 and which was sent to the Prosecutor by the Secretary-General of the League, Amre Moussa. The Palestinian National Authority indicated that it would send a supporting submission by September 2009.

IV. International cooperation

A. Cooperation with the United Nations

52. Cooperation with the United Nations continued to be essential to the Court institutionally and in the different situations and cases.

53. Logistical support from the United Nations greatly facilitated the work of the Court in the field. Peacekeeping missions, in particular the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), assisted the Court in many aspects (e.g., transportation, provision of information, communication support and the use of United Nations facilities) in accordance with the memorandum of understanding between the Court and MONUC. It is hoped that cooperation arrangements can also be arrived at with the United Nations Mission in the Central African Republic and Chad (MINURCAT) in the Central African Republic. The Office of the United Nations High Commissioner for Refugees provided support with respect to the relocation of witnesses.

54. The Court benefited from the expertise of relevant United Nations offices, for example in the area of witness protection, where the Court worked with the Office of the United Nations High Commissioner for Human Rights on protection techniques, with the United Nations Office on Drugs and Crime in strengthening national witness protection programmes and with the United Nations Children's Fund on training sessions that are sensitive to children.

55. The Office of Legal Affairs continued to play the leading role in facilitating cooperation, in particular with respect to the testimony of United Nations officials before the Court, the provision of information and the mainstreaming of the Court throughout the United Nations system. In close cooperation with the Office of Legal Affairs, the Court organized a round table in July 2009 involving staff from relevant United Nations bodies.

56. Regular, close contact between the Court and United Nations Headquarters was instrumental in facilitating cooperation. In this regard, the Court's New York liaison office, as the primary interlocutor for the United Nations Secretariat, played an essential role in dealing with cooperation issues. The head of the liaison office attended sessions of the Security Council and, pursuant to article 4 of the Relationship Agreement, participated in sessions of the General Assembly concerning the work of the Court. The liaison office also facilitated visits of senior Court officials to their counterparts in New York, followed developments of relevance to the Court in diverse United Nations meetings and updated Court officials accordingly, and provided information about the Court to Permanent Missions and to various United Nations departments. As issues related to the work of the Court continued to gain prominence at the United Nations, the head of the liaison office was increasingly called upon to provide information.

57. In addition to operational and logistical assistance, the public and diplomatic support of the United Nations continued to be important to the Court. Such support contributed to enhancing awareness of the importance of international cooperation and support from States and other actors. Statements explaining the role of the Court, in particular in the context of the efforts of the United Nations to pursue justice, such as those statements included in the latest report of the Secretary-General on enhancing mediation and its support activities (see S/2009/189, para. 37), helped to clarify the law for those involved in peace negotiations or who might otherwise deal with questions related to the Court.

58. Pursuant to article 10 of the Relationship Agreement, the United Nations provided facilities and services for the first and second resumptions of the seventh session of the Assembly of States Parties to the Rome Statute, held at United Nations Headquarters from 19 to 23 January and 9 to 13 February 2009, respectively. In the context of the plan of action for achieving universality and full implementation of the Rome Statute,[2] the United Nations facilitated the holding of a seminar on 19 May 2009 at United Nations Headquarters in New York on the issue "International criminal justice: the role of the International Criminal Court".

59. Pursuant to article 123, paragraph 1, of the Rome Statute, the Secretary-General sent invitations to States for the Review Conference of the Rome Statute, scheduled to be held from 31 May to 11 June 2010 in Kampala. The secretariat of the Assembly of States parties is liaising with the United Nations Office at Nairobi on issues related to the organization of the Conference and the servicing thereof.

B. Cooperation with and assistance from States, other international organizations and civil society

60. The Court made numerous requests to States parties, other States and international organizations for cooperation or assistance. Pursuant to article 87 of the Rome Statute, the content of such requests and related communications is often confidential in nature.

61. In addition to specific requests, the Court continued to work to develop its structural arrangements for cooperation, especially with respect to investigative activities, witness protection, the enforcement of sentences and the provisional release of accused persons pending trial. During the reporting period, no new agreements were concluded with States on the protection of witnesses or the enforcement of sentences. The need for agreements on protection became more urgent as the number of protected persons continued to increase with each case. With the possibility of sentences being handed down in 2010, the need for agreements on enforcement also increased.

62. The Prosecutor met with the Secretary-General of the International Criminal Police Organization (INTERPOL), Ronald Noble, on 2 September 2008 to pursue a cooperation agreement between the Office of the Prosecutor and INTERPOL.

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[2] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, annex I.

63. Efforts to finalize a memorandum of understanding between the African Union and the Court continued, and discussions continued on a possible cooperation agreement with the Organization of American States. In 2009, following the request of the Assembly of States Parties to the Rome Statute, the Court sent a mission to Addis Ababa to explore the desirability and feasibility of establishing an African Union liaison office. The Court reported on this matter to the Assembly of States Parties to the Rome Statute and is awaiting the decision of the Assembly during its forthcoming eighth session, in November 2009.

64. The Court met regularly with representatives of States, international organizations and civil society to update them on the work of the Court and to discuss items of mutual interest. The Court held two diplomatic briefings in The Hague and one briefing in Brussels. Officials and staff of the Court also met often with representatives of States at the United Nations and elsewhere and provided them with updates on the work of the Court.

65. Representatives of the Court participated in preparatory meetings leading to the Consultative Conference on International Criminal Justice organized by the MacArthur Foundation, which took place from 9 to 11 September 2009, with the participation of the President, Prosecutor and Registrar. Two strategic-level meetings were held between the Court and representatives of civil society organizations in The Hague, in addition to regular, ongoing contacts between the Court and representatives of civil society.

V. Institutional developments

A. Elections and appointments

66. Six judges were elected by the Assembly of States Parties to the Rome Statute. On 11 March 2009, Judges Joyce Aluoch, Sanji Mmasenono Monageng, Christine van den Wyngaert and Cuno Tarfusser took up office, while Judge Fumiko Saiga, initially elected in 2007 to finish an unexpired term of a previous judge, began a new term of office.[3] On 24 April 2009, Judge Saiga passed away. An election to fill two judicial vacancies will be held in November 2009.

67. On 11 March, following the solemn undertaking of the elected judges, the judges, meeting in plenary session, elected the Presidency of the Court. Judge Sang-Hyun Song was elected President, Judge Fatoumata Dembele Diarra was elected First Vice-President and Judge Hans-Peter Kaul was elected Second Vice-President. They will serve in those roles for a period of three years.

68. On 9 September 2008, the judges of the Court, meeting in plenary session, elected Didier Daniel Preira as the first Deputy Registrar of the Court. He began his five-year term of office on 17 October.

69. On 26 November 2008, the Office of the Prosecutor announced the appointment of Professor Catharine MacKinnon as Special Gender Adviser to the Prosecutor. On 19 June 2009, the Office announced the designation of Juan Méndez as Special Adviser to the Prosecutor on crime prevention. Both individuals are working *ad honorem*.

[3] Judge Mohamed Shahabuddeen, having been elected by the Assembly, resigned before taking office.

B. Assistance to the Special Court for Sierra Leone

70. In accordance with a memorandum of understanding concluded on 13 April 2006, the Court continued to provide courtroom services and facilities, detention services and facilities and other related assistance to the Special Court for Sierra Leone to enable the latter to conduct the trial of Charles Taylor in The Hague. Through an exchange of letters in September 2008, the Court and the Special Court agreed to extend the memorandum of understanding until November 2010 so as to enable the Special Court to conclude the trial and appeals proceedings.

VI. Conclusion

71. The Court experienced considerable developments during the reporting period, with the commencement of the first trial, the confirmation of charges against three individuals, the first voluntary appearance of a suspect pursuant to a summons to appear and the issuance of a warrant of arrest against a Head of State. The judges issued decisions on fundamental aspects of the Rome Statute, such as the principle of complementarity and the rights of the accused. The system set up by States in the Rome Statute continued to operate effectively in practice. Challenges nevertheless remained, none more evident than the execution of the eight outstanding warrants of arrest.